

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
BRITTANY BRIGITTA LISTER	)	
RONALD KEITH LISTER	)	CASE NO. 05-91529-MHM
	)	
Debtors	)	
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RICHARD GLASS	)	
	)	
	)	<b>ADVERSARY PROCEEDING</b>
Plaintiff	)	<b>NO. 05-6246</b>
v.	)	
	)	
RONALD KEITH LISTER	)	
	)	
Defendant	)	

**O R D E R**

On August 1, 2005, Defendant, who is proceeding *pro se*, filed a motion to open default. Default was entered by the Clerk July 25, 2005. No default judgment has been entered. Plaintiff's complaint to determine dischargeability was filed June 13, 2005, and summons issued June 14, 2005. Therefore, the deadline for filing an answer to Plaintiff's complaint was July 14, 2005. Defendant's answer and Defendant's motion to open default was filed August 1, 2005. Plaintiff filed a response opposing Defendant's motion to open default.

Defendant alleges that the answer was not timely filed because the summons and complaint were served upon Defendant at an incorrect address. Defendant alleges that an address change had been filed in the main case prior to the filing of this adversary proceeding.

The address change that was filed, however, was an address change for Brittany Brigitta Lister, a joint debtor in the main case. That address change expressly did not apply to Defendant. No address change for Defendant has been filed in the main case, which is now closed.

Defendant admits that on or about June 17, 2005, he contacted Plaintiff's attorney by telephone and provided her with a new address: 4759 Noble Drive, Mobile, Alabama 36619. The summons and complaint were served upon Defendant that same day at the address provided by Defendant by first class mail and certified mail. Although Debtor has filed no address change in this adversary proceeding, in a certificate of service attached to the answer, Debtor shows his address to be 9800 Terrace Drive, Fairhope, Alabama 36532.

Bankruptcy Rule 7055, based on F.R.C.P. 55(c), provides:

(c) **Setting Aside Default.** For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).<sup>1</sup>

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<sup>1</sup> F.R.C.P. 60(b) provides:

**(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

The provisions of Rule 60(b) are inapplicable to the instant case because no default judgment has been entered. Therefore, Defendant need only show good cause to set aside entry of the default. Based upon the facts set forth above, to the extent that Debtor suggests that the late filing of the answer was in any way the fault of Plaintiff or Plaintiff's attorney, that assertion is without merit. Nevertheless, the lateness of filing the answer appears to have been inadvertent and was corrected quickly. Although Plaintiff opposes Defendant's motion to open the default, it appears Plaintiff has suffered no prejudice as a result of the late answer. Under the circumstances of this case, Defendant has shown good cause to set aside the default.

Accordingly, it is hereby

ORDERED that Defendant's motion to open default is **GRANTED** and Defendant's answer is allowed as filed.

**The Clerk, U.S. Bankruptcy Court, is directed to serve** a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the \_\_\_\_ day of November, 2005.

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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE